

United States District Court  
Southern District of California

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. ) Case No. 10-CR-4246 JM  
) Status Hearing  
BASAALY SAEED MOALIN, ) Friday, September 23, 2011  
MOHAMED MOHAMED MOHAMUD, )  
ISSA DOREH, )  
AHMED NASIR TAALIL MOHAMUD, )  
)  
Defendants. )

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Before the Honorable Jeffrey T. Miller  
United States District Judge

Official Interpreter: Ahmedi Farah, CCI  
Official Court Reporter: Debra M. Henson, CSR, RPR  
U.S. Courthouse  
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Record produced by stenographic reporter

## 1 Appearances

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1           San Diego, California - Friday, September 23, 2011

2           (Defendant A. Mohamud is being assisted by a Somali  
3 interpreter.)

4           THE CLERK: Calling matter 13 on calendar,  
5 10-CR-4246, USA versus Basaaly Saeed Moalin, Mohamed Mohamed  
6 Mohamud, Issa Doreh, Ahmed Nasir Mohamud, for a status  
7 hearing.

8           MR. COLE: Good morning, your Honor. William Cole  
9 and Caroline Han for the United States.

10          THE COURT: Thank you. Do we have all counsel  
11 present? All right. Let's have counsel state your  
12 appearances, please; Mr. Cole and Ms. Han already have for  
13 the government.

14          MR. DRATEL: Thank you, your Honor. Good morning.  
15 Joshua Dratel for Mr. Moalin, and with me is Alice Fontier  
16 also from my office for Mr. Moalin.

17          THE COURT: Very good. Thank you.

18          MS. MORENO: Good morning, your Honor. Linda  
19 Moreno on behalf of Mr. Mohamud, who's in court in custody.

20          THE COURT: Thank you, Ms. Moreno.

21          MR. DURKIN: Tom Durkin on behalf of Nasir Mohamud,  
22 who is present in custody.

23          THE COURT: Thank you.

24          MR. GHAPPOUR: Good morning, your Honor. Ahmed  
25 Ghappour on behalf of Issa Doreh, who is present in custody.

1 THE COURT: Okay. Very good. Thank you. We have  
2 all four gentlemen present as well. Okay. Last time we were  
3 together was on August 8, and obviously I'm going to be  
4 asking for a bit of a status update and then have a few  
5 questions with respect to some of the matters that were being  
6 discussed last time in terms of discovery and scheduling.

7 Mr. Durkin indicated last time that the government  
8 was trying to locate an interview of his client taken in  
9 December of 2009 at the John Wayne International Airport  
10 there. Has that been resolved? Has that been cleared up?

11 MR. DURKIN: I have that, Judge.

12 THE COURT: You do have that? Okay. All right.  
13 Thank you. And the bank records -- apparently bank records  
14 were still being provided, Mr. Cole, at that point. You  
15 indicated that bank records were still going over. Has that  
16 process been about completed? Ms. Han?

17 MR. COLE: Yeah, the bank records are out, your  
18 Honor.

19 THE COURT: Okay. All right. So that's  
20 essentially done?

21 MR. COLE: Yes.

22 THE COURT: Okay. And Mr. Moalin's travel  
23 documents -- I'd like to pronounce that the correct way.  
24 I've heard Mo-al-in, I've heard Mo-a-leen. What's the  
25 correct pronunciation for that? Mister --

1 MR. DRATEL: Mo-al-in.

2 THE COURT: Mo-al-in? Have Mr. Moalin's travel  
3 documents been provided or are they no longer necessary?  
4 Anything -- that was an issue that was brought up last time.  
5 Not important?

6 MS. FONTIER: Your Honor, it was related to his  
7 nephew, who lived with him. Those were returned, and --

8 THE COURT: Not an issue.

9 MS. FONTIER: -- was taken care of.

10 THE COURT: Subscriber information and toll records  
11 for relevant phone numbers. Where do we stand on that? Mr.  
12 Cole?

13 MR. COLE: Your Honor, we produced -- since the  
14 last hearing, we produced a substantial amount of toll  
15 records information/subscriber information, and I believe we  
16 are -- I think we're waiting for a small amount of additional  
17 toll or subscriber information, very minimal amount. Most of  
18 the toll and subscriber information was provided in  
19 discovery, and as well -- the bulk of it, just for the  
20 defense counsel's benefit, probably the bulk of it was simply  
21 toll records for Mr. Moalin's phone, which is the largest  
22 volume.

23 THE COURT: Okay.

24 MR. COLE: Also, your Honor, we reproduced in  
25 discovery -- not reproduced -- we gave the Shidaal

1 transaction records again just for counsel's benefit. Those  
2 are the same records they already have; we just got them from  
3 a different source as well. We wanted to let them have what  
4 we'd gotten from both sources.

5 THE COURT: Okay. All right. So nothing is  
6 missing then from the Shidaal -- it was all from the Shidaal  
7 documents?

8 MR. COLE: It was the electronic database of the  
9 transactions, so we produced the disk again with a large  
10 number of that data -- a large part of database, but we just  
11 did obtain it from another source, and we wanted them to have  
12 it from both locations.

13 THE COURT: Okay. Last time we were together  
14 then -- if we can move to the area of interviews and  
15 translations or transcriptions. Last time we were together,  
16 there was a mention of the post-arrest interviews being done  
17 in English and that they were in the process of being  
18 transcribed. There were voluminous audiotapes I think that  
19 were mentioned by you, Mr. Cole. What's the status --

20 MR. COLE: Well, the post-arrest statements,  
21 depending on the defendant, some were longer than others; I  
22 think some were two to three hours, others were shorter. We  
23 have turned over a transcript of Mr. Doreh's. We had hoped  
24 to have transcripts in English of the others. We're still  
25 waiting. FBI anticipates within about three weeks or so we

1 should have additional transcripts for the others. Our  
2 office will take a little while to clean those up once we get  
3 the draft, but certainly before the next court appearance, we  
4 expect to have transcripts, English transcripts of those  
5 post-arrest statements for the defendants.

6 THE COURT: How many audiotapes are there or how  
7 many hours --

8 MR. COLE: I believe there's just one post-arrest  
9 statement for each defendant. So there's four post-arrest  
10 statements, but I don't recall the exact length of each one.  
11 Mr. Doreh's is done, so we're talking about the post-arrest  
12 statement for Mr. Khadar, which actually was really an  
13 invocation of rights, so that's really going to be a  
14 non-issue. There's a lengthy post-arrest statement for Ahmed  
15 Nasir -- or Mr. Taalil Mohamud, and there's a fairly lengthy  
16 one for Mr. Moalin. Those are the two that are taking a  
17 while to transcribe because they were -- I don't remember how  
18 long, but I want to say they were several hours each, and so  
19 it's taking a while to get a good quality English transcript  
20 of those post-arrest statements. The videos were turned over  
21 a long time ago to the defense; it's just a courtesy --

22 THE COURT: Just the audio portions of the --

23 MR. COLE: The audio and video have been turned  
24 over. We're just talking about the transcripts.

25 THE COURT: Okay. Okay. And there was an

1 indication you weren't particular happy with the quality of  
2 the audio; is that what you're cleaning up? Is that --

3 MR. COLE: Not the quality of the audio. It's just  
4 that with the quality of whoever did the first draft; we just  
5 weren't happy with the first draft of the English  
6 transcriptions. The interview's in English, but in terms of  
7 the transcription of it, the first draft was really poor, and  
8 we needed to listen to the audio again to fix it. There was  
9 a lot of things that had been transcribed poorly. And I  
10 expect the same thing's going to happen with the next two  
11 because of the accents involved.

12 THE COURT: Okay. Okay. But you're confident you  
13 can get that in the best possible form then, perhaps even  
14 enter into a stipulation as to the accuracy of the  
15 transcriptions with defense counsel?

16 MR. COLE: Your Honor, I think the -- to the extent  
17 the post-arrest statements -- we'd be happy to eventually  
18 work through any disputes over those transcripts, to the  
19 extent the government even uses them; we haven't even made  
20 that decision yet.

21 THE COURT: Okay.

22 MR. COLE: I think the bigger laboring oar will  
23 be -- and the bigger time savings ultimately will be if we  
24 are able to reach stipulations as to the transcripts of the  
25 Somali language audio intercepts --

1 THE COURT: Right.

2 MR. COLE: -- and so we'll eventually work with  
3 counsel on that.

4 THE COURT: Okay. Where are you in terms of  
5 providing those, the audio intercepts?

6 MR. COLE: We've provided all of them. If we  
7 receive -- well, we've provided all of the audio intercepts,  
8 and we've provided English language summaries, or verbatim to  
9 the extent we have them. If we get additional relevant  
10 translations of those calls, we'll keep providing those over  
11 as we receive them. But we've given them all over.

12 THE COURT: So they've been translated? Have you  
13 translated them and/or have you --

14 MR. COLE: We already have translated them --

15 THE COURT: -- provided only the English summaries?

16 MR. COLE: We've provided English summaries if we  
17 didn't have them verbatim --

18 THE COURT: Okay.

19 MR. COLE: -- and we've provided verbatim  
20 translations if we had them. And there are some calls that I  
21 don't have -- there's some calls that we turned over for  
22 which the government has neither summary or a translation,  
23 but the audio has been turned over to the defense.

24 THE COURT: There were about 690 audio calls that  
25 you were working with?

1 MR. COLE: No, I think the final number of audio  
2 calls ultimately produced in this case is around 1800 I  
3 believe.

4 THE COURT: Eighteen hundred, okay.

5 MR. COLE: Yes.

6 THE COURT: How many are pertinent and relevant  
7 from your perspective?

8 MR. COLE: Well, we turned over -- I think the  
9 number, your Honor, is around -- between 130 and 140  
10 translations --

11 THE COURT: Okay.

12 MR. COLE: -- and so, from our viewpoint at least,  
13 we obviously focused -- that's at least some rough estimate  
14 of what we felt was the most relevant of that whole 1800.

15 THE COURT: And that number's been pretty constant  
16 as I recall.

17 MR. COLE: Yeah. It's gone up by -- we've added  
18 additional verbatims over the initial number, maybe less than  
19 ten additional verbatim translations from our initial  
20 estimate the first time we were here before your Honor.

21 THE COURT: Okay. Okay.

22 MR. COLE: And you can -- I mean we certainly don't  
23 intend on using even that many in court, but that's kind  
24 of --

25 THE COURT: Are the two sides working together on

1 getting agreed-upon transcriptions or translations from the  
2 Somali audio intercepts?

3 MR. COLE: Well, we haven't had any -- well, I  
4 think we just haven't really discussed it. There certainly  
5 hasn't been any argument or disagreement about it, but there  
6 also hasn't really been a discussion. If they have them,  
7 they probably are taking time to review them, and certainly  
8 we'll look forward to discussing with them if there are, you  
9 know, any disagreements with any of the translations.

10 THE COURT: Okay. Thank you, Mr. Cole. I  
11 appreciate the information. Would any defense counsel want  
12 to be heard on any of these matters that I've been discussing  
13 with Mr. Cole related to ongoing discovery?

14 MR. DRATEL: Your Honor, I don't quarrel with all  
15 that Mr. Cole said as being accurate in terms of the status.  
16 The only -- I guess one thing I would say is in our  
17 preliminary beginning of -- in terms of having translations  
18 reviewed to determine accuracy, we probably will have some  
19 issues, but obviously before we'd bring that to the Court, we  
20 would marshal them for the government and try to work that  
21 out --

22 THE COURT: Sure.

23 MR. DRATEL: -- so we probably will have some  
24 disagreements with them about -- just based on what we've  
25 gone through so far. Another question is just in terms of

1 the audio, while we have gotten a substantial amount of  
2 audio, obviously, it does end at a certain point, and I don't  
3 know whether that's because the eavesdropping ended at that  
4 point or because that hasn't been produced, and I don't know  
5 the answer to that question; so that's one question that we  
6 have is -- basically it ended -- sometime in 2009 is when the  
7 production ends, and obviously there's a significant amount  
8 of time between that and the arrest, and I don't know whether  
9 that means we're going to be anticipating getting more  
10 material or whether that's the full universe of material  
11 that's already been provided.

12 THE COURT: Well, have you talked to Mr. Cole about  
13 this concern? I mean this is something you can --

14 MR. DRATEL: Yeah, sure --

15 MR. COLE: Sure.

16 THE COURT: -- get worked out pretty easily. Okay.

17 MR. DRATEL: You know, one of the other things I  
18 guess just to -- because of the nature of the interceptions,  
19 there's no minimization in an intelligence-oriented wiretap;  
20 it's 24/7, and minimization occurs really in the context --

21 THE COURT: Title III.

22 MR. DRATEL: Yeah, so we have a large universe of  
23 material that we have to go through to determine whether  
24 there are conversations that we would like to transcribe and  
25 then perhaps submit in evidence at some point, but this is

1 just a bit of a painstaking, time-consuming process because  
2 it's not as if -- you know, the summaries -- and the  
3 summaries sometimes don't match because they're not verbatim,  
4 they don't cover an entire conversation, and what may be  
5 important to us may not be important to the agent or the  
6 language specialist who's listening to the conversation.

7 THE COURT: Okay. Anything else, Mr. Dratel, on  
8 any of these matters Mr. Cole addressed?

9 MR. DRATEL: I don't think so, your Honor, but my  
10 co-counsel might.

11 THE COURT: Thank you. Yes, Mr. Ghappour?

12 MR. GHAPPOUR: Yes, your Honor, on the topic of  
13 interpreting is that we're currently in the process of trying  
14 to find a certified Somali interpreter that does not have a  
15 conflict with the case, so that's one of the things that's  
16 taking some time on our part.

17 THE COURT: Okay. Very good. Anyone else?  
18 Apparently not. Okay.

19 MR. DRATEL: Your Honor, if --

20 THE COURT: Yes, sir?

21 MR. DRATEL: Not about what Mr. Cole said, but also  
22 in terms of what we had discussed at the prior conference is  
23 that now that we --

24 THE COURT: We're going to get into scheduling if  
25 that's where you're going.

1 MR. DRATEL: Oh, yes.

2 THE COURT: I was just trying to canvass counsel on  
3 what some of the discovery activity had been, where you were  
4 in connection with that. I had my own notes from the last  
5 hearing about what you needed to address. I think those were  
6 all the discovery matters that were kind of left hanging from  
7 the August 8 hearing, and I know that we were beginning then  
8 to discuss a possible timetable for motion practice.

9 My question off the top would be based on an  
10 assumption that it's going to be fairly important to get the  
11 relevant discovery on much of this that we've discussed today  
12 and in proper form, transcribed form, to the defense  
13 community before the motions or many of the motions  
14 anticipated are actually filed.

15 Initially, last time we were together, you were  
16 talking about a filing date after Thanksgiving; I think  
17 that's what you were looking at, filing your motions after  
18 Thanksgiving. Well, that's coming up pretty quickly here,  
19 and I don't know how the defense feels in terms of their  
20 readiness to file substantive motions. It would be nice to  
21 get all foreseeable substantive motions filed at one time and  
22 then take the time that's necessary for a hearing, whether  
23 it's a day or a couple of days to deal with those -- with  
24 those pretrial substantive motions. But I don't know -- I'll  
25 take the pulse right now. I don't know if you're ready for a

1 briefing schedule at this point given that you're still  
2 waiting for material to be provided, transcriptions to be  
3 provided; for a certified Somali interpreter without a  
4 conflict to be invested in the case; for, as you point out,  
5 Mr. Dratel, all of the audiotapes to be mined for -- with the  
6 understanding there was no minimization, to be very carefully  
7 reviewed to see if there's evidence there that can be helpful  
8 to the defense. So what is your thinking on motion practice  
9 now?

10 MR. DRATEL: I think we still would like to set a  
11 motion schedule for two reasons, one of which is that in the  
12 event that we can proceed under the schedule that we've set  
13 forth here, I think that if we set it far enough out, we can  
14 manage to do all the things that need to be done for the  
15 substantive motions.

16 The second part is that I think also that it helps  
17 to motivate us all to get there as opposed to, you know, not  
18 having something firm, and, you know, if something comes --  
19 if we -- if a month from now we're in a situation in which it  
20 appears that that was unrealistic, we can revisit that in  
21 communication with the government and then communicate with  
22 the Court if we need to adjust the schedule. But we would  
23 like to set the schedule so we have something to shoot for.

24 THE COURT: Okay. I assume everyone's in agreement  
25 with that; you want to get some kind of a schedule down now

1 that you can be working toward in good faith and due  
2 diligence. Have you -- have the two sides met and conferred  
3 over the scheduling of pretrial motions? Mr. Cole, have you  
4 had that opportunity?

5 MR. COLE: No, your Honor, but we like the idea of  
6 having a motion hearing set as well or at least a date for  
7 the filing of the motions and a hearing date. And we are  
8 generally open -- we're far enough out in the schedule that  
9 our calendars are generally open. There's just a couple of  
10 weeks we wanted to avoid, but if counsel has a date --

11 THE COURT: Okay. I don't know if you can get your  
12 motions on -- that is, we can set a date right now for the  
13 filing of motions you feel comfortable with, but we can  
14 certainly set a date that you think has a fair chance of  
15 being met. Originally you had indicated after Thanksgiving  
16 or shortly after Thanksgiving, and then -- I don't know that  
17 that would include a FISA motion because I think the  
18 government's indicated that that would in all probability  
19 come later and you'd need something like 60 days to respond  
20 to that.

21 MR. COLE: That's right.

22 THE COURT: That might be -- we might set that  
23 aside; we might set it aside.

24 MR. COLE: Set it aside or, if it's filed -- our  
25 main concern is not when it's filed but that when it's filed

1 with all the other motions, to just recognize hopefully that  
2 it could be -- the response time, the hearing time on that  
3 would be on a different track.

4 THE COURT: All right. It should be dealt with  
5 perhaps separately. What I'd like to do is suggest to you  
6 this. You're all here together. If you'd like to use the  
7 jury deliberation room to sit down and pull out your  
8 schedules and begin to think about what dates you can agree  
9 upon, at least for the briefing schedule, I think that would  
10 be very helpful before counsel leaves. And I've got other  
11 calendar matters. We can just recess in this matter and have  
12 you come back, let me know what your thoughts are.

13 In terms of actually going forward with a motion  
14 hearing, I will tell you that I've got a major civil trial  
15 beginning October -- the last Monday in October, October 29,  
16 that is scheduled to go on the order of two to three months.  
17 I think that case will take me into the early part of  
18 January, and I'll be looking for every possible free day to  
19 continue with the trial of that very substantial matter.  
20 After that, there's -- I've got a -- what I would say is a  
21 major multi-defendant criminal case set for trial on the  
22 heels of the civil case. It's estimated to go anywhere from  
23 I think four to six weeks. But we could certainly take a  
24 couple of days' break in that trial -- now we're talking  
25 about latter January/early February -- to hear the motions

1 that will be filed in this case. So that might be an  
2 appropriate time to think about when you'd like to actually  
3 have these pretrial motions set for hearing, latter part of  
4 January or in February. So I give you those other scheduling  
5 matters so that you can keep those in mind. Obviously they  
6 don't affect the briefing schedule; you can file your briefs  
7 at any point in time.

8 But if there's nothing else you wish to discuss now  
9 while we're all here and in the presence of these four  
10 gentlemen and their friends and supporters, I would ask that  
11 you begin to meet and confer on arriving at some dates here.

12 MR. DRATEL: Certainly, your Honor.

13 MR. DURKIN: If I could just stand, I just have one  
14 other issue. I had mentioned earlier when we were here last  
15 time that I might be filing a motion regarding detention,  
16 and --

17 THE COURT: Yes, you did, you did, Mr. Durkin, and  
18 I think a few others joined in with you on that, and I think  
19 that's something that I may just defer to the magistrate  
20 judge on.

21 MR. DURKIN: My question was is that something I  
22 could file and just motion up at an earlier date. I --

23 THE COURT: I think so. Oh, definitely, yeah. I  
24 think that should come before the magistrate judge at this  
25 point in time. And I may or may not need to become involved

1 in that at a later point, but I think at the first instance,  
2 that, you know, that should be addressed by the magistrate  
3 judge in the case.

4 MR. DURKIN: Could I just clarify one other thing,  
5 Judge?

6 THE COURT: Certainly.

7 MR. DURKIN: The Section 4 pleading that the  
8 government was talking about, could they give us an estimate  
9 of when they think that might be filed?

10 MR. COLE: Well, your Honor, we would -- well, what  
11 would trigger that would be a motion to suppress by the  
12 defense, which we're -- we're not trying to put that off.  
13 Whatever your Honor -- and I guess we'll confer about the  
14 date they're going to be filing any motions to suppress.  
15 Their suppression motion will trigger our response, which  
16 will require us to do a Section 4 CIPA hearing with your  
17 Honor. And so I just know that, as I mentioned a couple  
18 times in the past, once they file their motion and we prepare  
19 our response and approach your Honor with that, that CIPA  
20 motion, with respect to the -- that filing with respect to  
21 the FISA suppression, we just need a longer response time  
22 than the usual two weeks; that's the point.

23 We will probably also -- at the time of the motion  
24 hearing, we'll also probably bring a Section 2 notice under  
25 CIPA just to set forth some of the basics again. It's a very

1 standard document I'm sure counsel have seen before talking  
2 about the CIPA framework and requesting a hearing under CIPA,  
3 a pretrial hearing with all counsel under CIPA.

4           We don't have a lot of CIPA issues for your Honor.  
5 We have -- other than the -- responding to a -- what I  
6 anticipate will be a FISA suppression motion. Other than  
7 that response being handled through CIPA procedures, we have  
8 very -- I would say, as far as it goes, potentially a very  
9 small number of additional CIPA-related matters to discuss  
10 with you and counsel. I think that we could tee those up for  
11 your Honor with our Section 2 filing at the same time as the  
12 hearing of the other motions, and then we can set further  
13 dates for addressing those issues.

14           THE COURT: All right.

15           MR. DURKIN: That answers that.

16           THE COURT: Does that help, Mr. Durkin? Okay.  
17 Very good. Okay. Then we'll be in recess in this matter.  
18 Anything further will be strictly briefing issues for which I  
19 assume defense counsel would be willing to waive their  
20 clients' presence as we just put dates --

21           MR. DRATEL: Yes, your Honor.

22           THE COURT: -- on the calendar? Okay. Very good.  
23 All right. Thank you.

24           (There was a break in the proceedings.)

25           THE CLERK: Recalling matter 13 on calendar,

1 10-CR-4246.

2 THE COURT: We don't need appearances at this point  
3 by the defendants; all defendants have waived their  
4 appearances through counsel for this brief resumption of the  
5 hearing in Moalin just to address a scheduling issue. Okay.  
6 We have everyone present; all counsel are present once again.

7 MR. COLE: Yes, your Honor. We had a good  
8 conversation, and these are the dates the parties want to  
9 propose to the Court: December 9, the defendants would file  
10 their motions by that date; January 13 the government would  
11 file its responses; February 9 there would be a motion  
12 hearing if it fits the Court's calendar. And counsel also  
13 expressed a desire to propose a trial date of May 7, which we  
14 all discussed and would meet all of our calendars.

15 MS. MORENO: Counsel forgot the January 27 proposed  
16 date for the defense to file replies.

17 MR. COLE: Sorry.

18 THE COURT: January 27 for reply?

19 MS. MORENO: Yes, your Honor.

20 THE COURT: You're not giving me too much time to  
21 look over all these things, are you, with the briefing  
22 completed the end of January and then your hearing on  
23 February 9. I think I'd like a little more time. You're  
24 taking two weeks to reply, but you're giving me less than two  
25 weeks to review all of this material.

1 MR. DRATEL: We could compress that reply time,  
2 your Honor.

3 THE COURT: I'm sorry?

4 MR. DRATEL: We'll compress that reply time if --

5 THE COURT: I think so.

6 MR. DRATEL: Want to say a week?

7 THE COURT: The 20th for reply. Obviously I'll be  
8 looking at the papers before the reply comes in, but still, I  
9 assume that the matters will be pretty substantial. Okay.  
10 Well, I'll adopt those dates then. Let's get those initial  
11 dates down. It will be the order that all motions, pretrial  
12 motions, be filed and served no later than Friday,  
13 December 9, 2011; further, that responses to motions be filed  
14 and served no later than January 13, 2012; that reply papers  
15 be filed and served no later than January 20, 2012, Friday;  
16 and that the date of February 9 be set -- what day of the  
17 week is that?

18 MR. DRATEL: Thursday, your Honor.

19 THE COURT: Thursday? Let me just check one thing.  
20 What's your estimated length of the hearing, one day or  
21 longer?

22 MR. DRATEL: Could be one day, your Honor.

23 THE COURT: Okay. We'll make it Thursday,  
24 February 9.

25 MR. DRATEL: Particularly also since it's probably

1 likely that the FISA will extend beyond that.

2 THE COURT: Yes.

3 MR. DRATEL: We may be able to do that -- we may be  
4 able to do the Section 2 on that same day, but that obviously  
5 depends on whether the government can get all that together.

6 THE COURT: Okay. Those dates then are set at this  
7 point and made a part of the scheduling order. And with  
8 respect to a trial date, I think you can be confident that  
9 whether we set a trial date in May now or in February, that  
10 May would be available for you. Does that raise your comfort  
11 level though that if a trial date is set now that you're  
12 going to actually go to trial at that time?

13 MS. MORENO: Raises my comfort level, your Honor.

14 MR. DRATEL: The other issue, your Honor, is also  
15 the ability to tell other courts that something is set so  
16 that something doesn't get put then and then we end up  
17 backing this up a significant amount of time.

18 THE COURT: What's your estimated length of trial?

19 MR. DRATEL: I think we're talking about maybe  
20 three weeks total, including a defense case in there. I  
21 think the government's somewhere in the two-week range.

22 MR. COLE: That's right, your Honor.

23 THE COURT: What was your date then? What was the  
24 date that you arrived at?

25 MR. COLE: May 7.

1 THE COURT: Which is a Monday.

2 MS. MORENO: Yes, your Honor.

3 THE COURT: We'll set your trial date for May 7,  
4 and we'll mark it at 9 a.m. We'll mark it as a three-week  
5 matter. Motions in limine need to be backed up to that. I'm  
6 having a hard time getting a 2012 calendar. Let me see if I  
7 have it here. Okay. April and May of 2012, Gaby. Hold on  
8 for just a moment, counsel. I've got March.

9 MR. COLE: Your Honor, while you're pulling that  
10 calendar, what was the time for the motion hearing on the 9th  
11 of February?

12 THE COURT: Nine a.m. May 9, May 9 -- was that the  
13 date you mentioned?

14 MR. DRATEL: May 7.

15 THE COURT: Yeah, Monday. Then I would want to  
16 hear motions in limine by Friday, April 20.

17 MR. DRATEL: Your Honor --

18 THE COURT: Yes?

19 MR. DRATEL: -- can we ask for an earlier period  
20 because we think some of them might be substantial and  
21 somewhat fact-intensive, and it might better in terms of  
22 trial preparation if we --

23 THE COURT: Well, to the extent motions in limine  
24 are fact-intensive, that's not really the function of motions  
25 in limine as I see them. What did you have in mind when

1 you're saying fact-intensive?

2 MR. DRATEL: Well, in the sense that the -- in  
3 terms of volume, in terms of -- for example, there may be  
4 parts of conversations that the government's looking to  
5 introduce that we might think are either for 403 or other  
6 reasons not admissible. There are evidentiary issues that I  
7 think are perhaps somewhat fundamental in the case that  
8 might -- I'll give you one, not giving anything away in the  
9 sense that there's a -- there's a period of time in which  
10 there is conduct that's before a designation of Al-Shabaab so  
11 that it would not be aid to a designated terrorism  
12 organization during a period of time. If the government's  
13 going to seek to introduce that, then we would have an  
14 in-limine motion with respect to that in -- both on an  
15 evidentiary level as well as on a constitutional level/First  
16 Amendment issues, things like that that we think are going to  
17 be implicated by that.

18 THE COURT: Well, how much earlier were you looking  
19 at, Mr. Dratel?

20 MR. DRATEL: If we could have three weeks earlier  
21 than that, your Honor, maybe end of March.

22 THE COURT: Well, you're really going to be -- if  
23 you're talking about March, my concern is this. We set a  
24 date for motions in limine. I just want to set one date for  
25 motions in limine, I mean have motions in limine heard at one

1 time and not in stages. And so if you set it too early, you  
2 may not know exactly where you're going, what your strategy  
3 is going to be, exactly what your proofs are going to be; and  
4 you may be able to -- to file certain motions but not all  
5 motions is what I'm saying. So I'd rather be handling  
6 everything at once and having both sides know exactly what's  
7 in or what's out and then have you prepare and, you know,  
8 knowing what in all probability is going to be excluded by  
9 way of motion in limine practice. I'll do this, I'll move it  
10 up another -- well, I'll move it up to Friday, April 6 --

11 MR. DRATEL: That's good, your Honor. Thank you.

12 THE COURT: -- and that will be the date for the  
13 deadline for filing and serving motions in limine. Wait a  
14 minute. No, that's the hearing date. Okay. April 6  
15 hearing. Well, the problem -- no, the problem with that is  
16 it's a Friday, it's a calendar Friday. I'm going to have to  
17 set you on a separate Friday, so you're looking at Friday,  
18 the 13th, you're looking at Thursday, the 5th, Thursday, the  
19 12th.

20 MR. DURKIN: Thursday, the 5th, that's fine with  
21 me.

22 THE COURT: Everyone available then?

23 MR. COLE: Yes, your Honor.

24 THE COURT: That's one day, okay. That's your  
25 hearing date for motions in limine. Okay. Let's work our

1 way back from that then. Your motions have to be filed and  
2 served no later than March 8, and opposition filed and served  
3 no later than March 22. I would imagine most if not all of  
4 your motions are going to be opposed, but if there is an  
5 unopposed motion, then in your opposition -- in your response  
6 indicate please that a particular motion is not opposed, for  
7 obvious reasons. And I don't need reply on motions in  
8 limine. So those will be your dates, March 8, then March 22  
9 for filings and motions of the -- filing and motions in  
10 limine and your responses thereto. Of course that applies  
11 for both sides, okay?

12 MR. DURKIN: Yes, thank you, your Honor. And I may  
13 have missed it, but the time on the 5th of April?

14 THE COURT: Should be nine o'clock.

15 MR. DURKIN: Thank you.

16 THE COURT: Okay. Okay. If we need to set a  
17 further pretrial motion in connection with FISA/CIPA, we can  
18 do that at the -- your motion hearing now currently set for  
19 pretrial motions.

20 MR. COLE: Thank you, your Honor.

21 THE COURT: Okay. Anything else before we adjourn  
22 in this matter? Okay, counsel. Thank you.

23 (The proceedings were concluded.)  
24  
25

Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated August 10, 2012 at San Diego, California.

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/s/ Debra M. Henson (electronic)  
Debra M. Henson  
Official Court Reporter